Supreme Court, U.S.
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No. 05-____

In The
Supreme Court of the United States

JOHN SALAZAR, as the Sheriff
of Huerfano County, Colorado,

Petitioner,

v.

TEREZA GONZALES,

Respondent.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Tenth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

May a sheriff be held individually and personally liable pursuant to 42 U.S.C. § 1983 based on his failure to protect an inmate from a sexual assault by an employee of the jail in the absence of any actual or constructive knowledge the employee posed any risk to the health, safety and well-being of the inmates in the jail?

LIST OF PARTIES TO THE PROCEEDING

1. Tereza Gonzales, respondent
2. Robert Martinez
3. Dominick Gonzales
4. Huerfano County, Colorado
5. John Salazar, Sheriff of Huerfano County, petitioner

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
LIST OF PARTIES TO THE PROCEEDING	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS	1
STATEMENT OF THE CASE	2
STATEMENT OF RELATED CASES	6
REASONS FOR GRANTING THE WRIT	6
I. THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT'S DECISION FAILS TO FOLLOW DECISIONS FROM THE COURT	6
A. The Court of Appeals' Decision Conflicts With Precedent From the Court in Concluding Sheriff Salazar Could be Deliberately Indifferent to Ms. Gonzales' Eighth Amendment Constitutional Rights Without Any Prior Knowledge That Robert Martinez Posed Any Danger to Any Inmates in the Huerfano County Jail Including Ms. Gonzales	7

TABLE OF CONTENTS – Continued

Page

B. The Court of Appeals' Decision Also Conflicts With the Court's Precedent in Failing to Recognize and Correctly Apply the Causation Requirement for 42 U.S.C. § 1983 Cases in Holding Ms. Gonzales Stated a Viable Claim Concerning Sheriff Salazar's Deliberate Indifference to Her Constitutional Rights Based on Conduct by Mr. Martinez 16

II. THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT'S OPINION CONFLICTS WITH THE OPINIONS OF OTHER CIRCUIT COURTS OF APPEAL 21

III. THE PROCEEDING INVOLVES A QUESTION OF EXCEPTIONAL IMPORTANCE, IN THAT THE RESULT, IF UNDISTURBED, WILL LEAD TO SIGNIFICANT LIABILITY FOR ADMINISTRATORS AND WARDENS OF JAILS AND PRISONS THROUGHOUT THE UNITED STATES PURSUANT TO 42 U.S.C. § 1983 BASED ON NO ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF PRIOR SEXUAL MISCONDUCT BY INDIVIDUALS UNDER THEIR SUPERVISION SO LONG AS ANY PRIOR INCIDENT OF SEXUAL MISCONDUCT BY ANY EMPLOYEE OF THE JAIL OR PRISON WITH INMATES HAS PREVIOUSLY OCCURRED 28

CONCLUSION 30

TABLE OF CONTENTS – Continued

Page

APPENDICES:

Court of Appeals Opinion: Gonzales v. Martinez, 403 F.3d 1179 (10th Cir. Apr. 14, 2005).....App. 1

District Court Order Granting Motion for Summary Judgment (May 7, 2003).....App. 17

Recommendation that Motion for Summary Judgment Filed by Sheriff and County in Regard to Claims of Tereza Gonzales be Granted (Feb. 20, 2003).....App. 20

Court of Appeals Order Denying Petition for Rehearing and Rehearing En Banc (June 6, 2005).....App. 57

Reporter's Transcript, Hearing on Motion for Summary Judgment (Apr. 30, 2003).....App. 58

Deposition of John G. Salazar (May 2, 2000).....App. 84

Deposition of Tereza M. Gonzales (May 3, 2000).....App. 131

Affidavit of John Salazar.....App. 140

Information Re: People of State of Colorado against Robert Conrad Martinez.....App. 142

Judgment of Conviction in People of State of Colorado v. Tereza Gonzales.....App. 144

Deposition of Paul J. Zudar (Nov. 29, 2000).....App. 146

Deposition of Charles L. Montoya (Nov. 29, 2000).....App. 185

Deposition of Amanda Guel (Dec. 6, 2000).....App. 222

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Arnold v. International Business Machines Corp., 637 F.2d 1350 (9th Cir. 1981) 19

Baucher v. Eastern Indiana Prod. Credit Associate, 906 F.2d 332 (7th Cir. 1990) 19

Baynard v. Malone, 268 F.3d 228 (4th Cir. 2001), *cert. denied*, 535 U.S. 954 (2002) 18

Beers-Capitol v. Whetzel, 256 F.3d 120 (3rd Cir. 2001) 22, 23, 25

Board of County Commissioners of Bryan County v. Brown, 520 U.S. 397 (1997) ..... *passim*

Crawford-El v. Britton, 523 U.S. 574 (1998) 18

Curry v. Scott, 249 F.3d 493 (6th Cir. 2001) 23, 24, 25

Estate of Davis v. City of North Richland Hills, 406 F.3d 375 (5th Cir. 2005) 18

Dimarco-Zappa v. Cabanillas, 238 F.3d 25 (1st Cir. 2001) 18

Dixon v. Burke County, Georgia, 303 F.3d 1271 (11th Cir. 2002) 19

Farmer v. Brennan, 511 U.S. 825 (1994) ..... *passim*

Gebser v. Lago Vista Ind. Sch. District, 524 U.S. 274 (1998) 11

Gonzales v. Martinez, 403 F.3d 1179 (10th Cir. 2005) 1

Gossmeyer v. McDonald, 128 F.3d 481 (7th Cir. 1997) 18

TABLE OF AUTHORITIES – Continued

Page

Hahn v. McLey, 737 F.2d 771 (8th Cir. 1984) 18

Hector v. Watt, 235 F.3d 154 (3rd Cir. 2000) 19

Helling v. McKinney, 509 U.S. 25 (1993) 13

Hernandez v. Keane, 341 F.3d 137 (2d Cir. 2003), *cert. denied*, 125 S.Ct. 971 (2005) 18

Hovater v. Robinson, 1 F.3d 1063 (10th Cir. 1993) 4

International Action Center v. United States, 365 F.3d 20 (D.C. Cir. 2004) 18, 27

Leach v. Shelby County Sheriff, 891 F.2d 1241 (6th Cir. 1989), *cert. denied*, 495 U.S. 932 (1990) 18

Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. 163 (1993) 17

Lopez v. Lemaster, 172 F.3d 756 (10th Cir. 1999) 4

Monell v. Department of Social Services, 436 U.S. 658 (1978) 18

Muhammad v. Close, 379 F.3d 413 (6th Cir. 2004) 19

Poe v. Leonard, 282 F.3d 123 (2d Cir. 2002) 24, 25

Polk County v. Dodson, 454 U.S. 312 (1981) 17

Randall v. Prince George's County, Maryland, 302 F.3d 188 (4th Cir. 2002) 27

Riley v. Olk-Long, 282 F.3d 592 (8th Cir. 2002) 21, 22, 25

Rizzo v. Goode, 423 U.S. 362 (1976) 18, 27

Rodriguez-Cirilo v. Garcia, 115 F.3d 50 (1st Cir. 1997) 18

Scott v. Hern, 216 F.3d 897 (10th Cir. 2000) 19

TABLE OF AUTHORITIES – Continued

Page

Shaw v. Stroud, 13 F.3d 791 (4th Cir. 1994) 26, 27

Slakan v. Porter, 737 F.2d 368 (4th Cir. 1984) 27

Warth v. Seldin, 422 U.S. 490 (1975) 18

Worrell v. Henry, 219 F.3d 1197 (10th Cir. 2000), *cert. denied*, 533 U.S. 916 (2001) 18

Zahrey v. Coffey, 221 F.3d 342 (2d Cir. 2000) 18

UNITED STATES CONSTITUTION

U.S. Const. Amend VIII 1, 9

FEDERAL STATUTES

20 U.S.C. §§ 1681 et seq. 11

28 U.S.C. § 636(b) 4

28 U.S.C. § 1254 1

28 U.S.C. § 2101(c) 1

42 U.S.C. § 1983 ..... *passim*

Fed. R. Civ. P. 72(b) 4

RULES OF THE SUPREME COURT OF THE UNITED STATES

Rule 13.3 1

OPINIONS BELOW

The decision of the United States Court of Appeals has been published at 403 F.3d 1179. App. 1. The decision of the United States District Court for the District of Colorado was not published. App. 17. The Recommendation of the United States Magistrate Judge was also not published. App. 20.

JURISDICTION

The opinion of the United States Court of Appeals for the Tenth Circuit was entered on April 14, 2005. App. 1. Petitioner John Salazar filed a Motion for Extension of Time to File Petition for Rehearing on April 28, 2005, which as granted by the United States Court of Appeals for the Tenth Circuit on May 10, 2005, requesting until May 20, 2005. On May 20, 2005, Petitioner John Salazar filed a Petition for Rehearing En Banc. The United States Court of Appeals for the Tenth Circuit denied the Petition for Rehearing En Banc in an Order dated June 6, 2005. App. 57. The Court has jurisdiction to entertain this petition for certiorari pursuant to the provisions of 28 U.S.C. § 1254, 28 U.S.C. § 2101(c), and Rule 13.3 of the Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Eighth Amendment to the United States Constitution:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

This case also involves 42 U.S.C. § 1983:

Civil Action for Deprivation of Rights

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

Tereza Gonzales was an inmate in custody at the Huerfano County Jail. John Salazar was the elected Sheriff of Huerfano County. Robert Martinez and Dominick Gonzales were both Detention Officers who worked in the Huerfano County Jail.

Ms. Gonzales alleges she was sexually assaulted by Mr. Martinez on October 13, 1998. Mr. Martinez was the Jail Administrator of the Huerfano County Jail at that time, and held the rank of Major. On the afternoon of October 13, 1998, Mr. Martinez removed Ms. Gonzales from the women's detention area and took her to the

commissary in the jail. Once in the commissary, Mr. Martinez compelled Ms. Gonzales to submit to his sexual actions, including his fondling of Ms. Gonzales' breasts and genital area, and including the performance by Mr. Martinez of oral sex upon Ms. Gonzales. As a result of the incident involving Ms. Gonzales, on October 15, 1998, Mr. Martinez was terminated from his employment, and was subsequently charged and convicted of felonious sexual assault.

Ms. Gonzales filed this lawsuit on June 18, 1999, alleging *inter alia* Sheriff Salazar violated her constitutional rights pursuant to 42 U.S.C. § 1983 by failing to prevent Mr. Martinez's sexual assault of her during her incarceration at the Huerfano County Jail. Sheriff Salazar filed a Motion for Summary Judgment. On February 20, 2003, United States Magistrate Judge O. Edward Schlatter issued a Recommendation that Motion for Summary Judgment Filed by Sheriff and County in Regard to Claims of Tereza Gonzales by Granted. App. 20. In pertinent part, the Magistrate Judge analyzed t' lack of evidence Sheriff Salazar knew of any misconduct by Mr. Martinez prior to October 13, 1998, as follows:

> With minor exceptions, none of the incidents listed by plaintiff makes any reference at all to any serious misconduct by Martinez. Instead, plaintiff describes a history of misconduct by other deputies, including deputy Gonzales. Plaintiff has presented absolutely no evidence to support an inference that Martinez posed a substantial risk of harm, or even ***any*** risk of harm, to female inmates.
>
> In the absence of any evidence of incidents that might reflect that Martinez posed a risk of